

1 in violation of 47 U.S.C. § 301. This Court has jurisdiction
2 under 47 U.S.C. § 401(a).

3 After establishing that Defendant had broadcast Free Radio
4 Berkeley without a license on two specific dates, the FCC first
5 imposed a monetary forfeiture against him in November 1993.
6 Defendant filed two documents with the FCC in connection with
7 this fine: a response to the notification of the impending
8 forfeiture order, and an application for review of the forfeiture
9 order after it was issued. See Def.'s Exhs. A & B. In both
10 documents Defendant argued that the existing regulations, which
11 preclude the possibility of licensing micro radio broadcasting,
12 are unconstitutional.¹ The FCC has taken no further action on
13 the forfeiture. Meanwhile, the D.C. Circuit struck down the fine
14 structure on which Defendant's \$20,000 forfeiture amount was
15 based, on grounds that it violates the Administrative Procedure
16 Act. United States Telephone Assoc. v. FCC, 28 F.3d 1232, 1236
17 (D.C.Cir. 1994).

18 Rather than addressing Defendant's arguments regarding the
19 validity of the FCC regulations at issue by pursuing the
20 forfeiture, the FCC seeks to stop Free Radio Berkeley's
21 broadcasts in the present action for injunctive relief.
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23

24 ¹As currently structured, FCC regulations prevent
25 licensing of any commercial FM stations below 100 watts, and
26 provide that no further licenses for non-commercial educational
27 stations below 100 watts may be issued. 47 C.F.R.
28 §§ 73.211(a), 73.511(a), 15.239(a). While the regulations
permit certain unlicensed broadcasts, the maximum field
strength permitted for such broadcasts precludes reception
beyond a 2-block radius. 47 C.F.R. § 15.239(b).

1 LEGAL STANDARD

2 The moving party is entitled to preliminary injunction if it
3 establishes either:

- 4 (1) a combination of probable success on the merits and the
5 possibility of irreparable harm, or
6 (2) that there exist serious questions regarding the merits
7 and the balance of hardships tips sharply in its favor.

8 Rodeo Collection, Ltd. v. West Seventh, 812 F.2d 1215, 1217 (9th
9 Cir. 1987); California Cooler v. Loretto Winery, 774 F.2d 1451,
10 1455 (9th Cir. 1985); see also Wm. Inglis & Sons Baking Co. v.
11 ITT Continental Baking Co., 526 F.2d 86, 88 (9th Cir. 1975);
12 County of Alameda v. Weinberger, 520 F.2d 344, 349 (9th Cir.
13 1975).

14 The test is a "continuum in which the required showing of
15 harm varies inversely with the required showing of
16 meritoriousness." Rodeo Collection, 812 F.2d at 1217 (quoting
17 San Diego Comm. Against Registration and the Draft v. Governing
18 Board of Grossmont Union High School Dist., 790 F.2d 1471, 1473
19 n.3 (9th Cir. 1986)). To overcome a weak showing of merit, a
20 plaintiff seeking a preliminary injunction must make a very
21 strong showing that the balance of hardships is in her favor.
22 Rodeo Collection, 812 F.2d at 1217.

23 DISCUSSION

24 Probability of success on the merits

25 The government has shown probable success on the merits on
26 the narrow issue that Defendant has violated the existing statute
27 prohibiting radio broadcasting without a license. However, the
28 government has failed to show a probability of success on the
central issue raised by Defendant, i.e., whether the FCC's

1 complete prohibition of micro radio is constitutional.

2 Defendant argues that by completely prohibiting micro radio
3 broadcasts, the current FCC regulatory scheme deprives the
4 prospective broadcasters and their listeners of access to the
5 public airwaves in violation of the First Amendment. When First
6 Amendment free speech rights are impacted by government
7 regulation, the government must establish that the contested
8 regulations are the least restrictive means available to further
9 a compelling state interest. See FCC v. League of Women Voters
10 of California, 468 U.S. 364, 380-81 (1984). Traditionally, FCC
11 regulation of the airwaves has been justified because the radio
12 spectrum cannot accommodate an unlimited number of users. See
13 Turner Broadcasting System, Inc. v. FCC, 114 S.Ct. 2445, 2456
14 (1994). Defendant argues that the regulations prohibiting micro
15 radio broadcasting, and the FCC's justifications for them, are
16 based on out-of-date assumptions about technological
17 capabilities. Contrary to the FCC's assertions in support of its
18 ban on micro radio, Defendant argues that micro radio
19 broadcasting can be permitted without risk of signal interference
20 to high-power broadcasters. Defendant cites Canadian law, which
21 licenses low-power FM radio broadcasters, and an FCC report which
22 cited Canadian law, in support of this contention. See Exh. B at
23 7-8. Thus, Defendant argues that the FCC's assertion that micro
24 radio broadcasting may interfere with the broadcasts of licensed,
25 high-powered commercial radio stations does not meet the
26 constitutional test of imposing the least restrictive means
27 available to further a compelling government interest, and thus,
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1 violates First Amendment free speech rights.

2 Moreover, Defendant argues that by prohibiting micro radio
3 broadcasting, the FCC effectively eliminates opportunities for
4 low-cost broadcasting on community issues as an alternative to
5 mainstream perspectives, and thereby violates its mandate to
6 regulate in the interests of the whole public, not just the
7 economically powerful. See Metro Broadcasting, Inc. v. FCC, 110
8 S.Ct. 2997, 3010 (1990) (people as a whole have First Amendment
9 rights in radio, including the right to balanced presentation of
10 information on issues of public importance, which is sufficient
11 constitutional basis for FCC's minority ownership policies).

12 Finally, Defendant asserts that the FCC prohibits micro radio
13 broadcasting generally, and selectively seeks to enjoin Defendant
14 specifically, because of the political content of their speech.

15 The government has responded with argument and citations to
16 Supreme Court cases which affirm the statutory authority of the
17 FCC to regulate and license radio broadcasters, and which affirm
18 the scarcity doctrine as a valid grounds for such regulation. As
19 Plaintiff and Amici point out, this is not the issue. Defendant
20 does not challenge the FCC's authority to regulate micro-power
21 broadcasts. Rather, Defendant challenges the constitutionality
22 of the present regulations, which impose a complete ban on
23 licensing FM broadcasts of less than 100 watts. None of the
24 cases cited by the government involved these specific
25 regulations. Accordingly, they do not establish as a matter of
26 law that the regulations at issue are constitutional. The fact
27 that the statute is constitutional does not compel the conclusion
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1 that regulations promulgated under it are also constitutional.
2 Such a conclusion would be untenable; it would render meaningless
3 the very inquiries undertaken by the Supreme Court in the cases
4 cited by the government, i.e., whether certain restrictions
5 imposed by the FCC met the First Amendment constitutional test of
6 the least restrictive means available to further a compelling
7 state interest, as well as the statutory mandate. See, e.g., 47
8 U.S.C. § 303(r) (providing FCC with authority to regulate in the
9 public interest, convenience or necessity.); NBC v. United
10 States, 319 U.S. 190 (1943) (upholding regulations re: multiple
11 ownership of AM stations under statutory mandate); Red Lion
12 Broadcasting Co. v. FCC, 393 U.S. 367 (1969) (establishing the
13 scarcity doctrine and finding FCC rules creating the fairness
14 doctrine constitutional); FCC v. Nat'l Citizens Comm. for
15 Broadcasting, 436 U.S. 775 (1978) (upholding regulations barring
16 common ownership of newspaper and broadcasting stations under
17 statutory mandate and First Amendment).

18 The government also argues that the FCC has met its
19 statutory mandate by undertaking an extensive study of the
20 feasibility of allowing micro radio broadcasts before deciding to
21 prohibit them. See 47 U.S.C. § 303(g) (FCC required to "study
22 new uses for radio, provide for experimental uses of frequencies,
23 and generally encourage the larger and more effective use of
24 radio in the public interest"). The problem with this argument
25 is that the FCC study was done in 1978. The crux of Defendant's
26 challenge is that technology has changed since then, and the
27 feasibility of micro-power broadcasting has changed with it. As
28

1 Defendant points out, in 1993 Canada modified its rules to permit
2 micro-power broadcasting in urban areas (Canada had allowed
3 micro-power broadcasting in remote communities since 1978). This
4 supports Defendant's argument that determinations based on 1978
5 technology are obsolete. Accordingly, the FCC is arguably
6 violating its statutory mandate as well as the First Amendment by
7 refusing to revisit the issue. See 47 U.S.C. § 157(a) ("It shall
8 be the policy of the United States to encourage the provision of
9 new technologies and services to the public"); id. § 324 ("In all
10 circumstances, except in the case of radio communications or
11 signals relating to vessels in distress, all radio stations,
12 including those owned and operated by the United States, shall
13 use the minimum amount of power necessary to carry out the
14 communication desired").

15 If the FCC's current regulations, which prevent Defendant
16 from complying with the statute's licensing requirement, violate
17 the agency's statutory mandate and the First Amendment,
18 Defendant's violation of the statute cannot form the basis for
19 granting the declaratory and injunctive relief the government
20 seeks. For the reasons discussed above, the government has
21 failed to establish a probability of success on its contention
22 that the current regulatory ban on micro broadcasting is
23 constitutional. At most, the government has raised serious
24 questions as to the constitutionality of these regulations.
25 Irreparable harm/balance of hardships

26 Citing United States v. Nutri-Cology, 982 F.2d 394 (9th Cir.
27 1992), the government argues that there is a presumption of
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1 irreparable injury in this case because the government has
 2 established a likelihood of success on its assertion that
 3 Defendant is violating the applicable statute by broadcasting
 4 without a license. In Nutri-Cology, the court held that "where
 5 the government has met the 'probability of success' prong of the
 6 preliminary injunction test, we presume it has met the
 7 'possibility of irreparable injury' prong because the passage of
 8 the statute is itself an implied finding by Congress that
 9 violations will harm the public." Id. at 398. However, as
 10 Defendant argues, the Ninth Circuit in that case was careful to
 11 establish that the presumption applies only where the violation
 12 of a statute is not adequately disputed. Id. Where, as here,
 13 the constitutionality of the implementing regulations, and their
 14 validity under the statutory mandate, is at issue, the resulting
 15 violation of the statute is also at issue, and the government
 16 must show a likelihood of success regarding the constitutional
 17 challenges before the Court can presume that violations of the
 18 statute amount to irreparable injury as a matter of law. In
 19 cases challenging the constitutionality of regulations
 20 promulgated under a statute, it cannot be presumed that
 21 violations of the statutory/regulatory scheme amount to public
 22 harm. Indeed, the opposite is asserted by the constitutional
 23 challenge.

24 The government also attempts to establish irreparable harm
 25 by asserting that Defendant's broadcasting may interfere with
 26 legitimate licensed broadcasting. The government argues that it
 27 has documented two occasions of such interference, and further,
 28

1 that because Defendant's equipment is not FCC-approved, it must
 2 be considered likely to emit spurious signals without warning,
 3 thus causing harmful interference to air navigation and
 4 communications operations. However, the record does not support
 5 the latter assertion. Although a declarant for the government
 6 asserts he has witnessed such interference from other home-made
 7 radio equipment, he does not clearly state that micro radio
 8 broadcasts specifically can cause it. See Kane Decl. ¶ 29. The
 9 government has not shown that Defendant's equipment is defective,
 10 and Defendant asserts that it is not.

11 Defendant also asserts that on one of the two occasions of
 12 documented interference with licensed broadcasting, the
 13 government agent had to drive right up to Defendant's transmitter
 14 to provoke interference. Defendant states that he immediately
 15 discontinued broadcasting on those two occasions when his signal
 16 wavered, and no other instances have been documented over an 18-
 17 month period. Finally, and most troubling, Defendant asserts
 18 that the FCC has not sought injunctions against several other
 19 micro broadcasters known to the FCC, who have also been subjected
 20 to forfeiture proceedings by the FCC, and that in some cases,
 21 such micro broadcasters have continued their broadcasting for
 22 several years. Under these circumstances, the government's
 23 contention that Defendant's broadcasts present a threat of
 24 irreparable harm is unpersuasive.

25 At most, the government's allegations of two instances of
 26 brief interference present an issue for balancing of hardships.
 27 The Court finds that the harm to the First Amendment rights of
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Defendant and the public at large which may result from enforcing the current regulations outweighs the slight showing of interference proffered by the government.

CONCLUSION

The government has so far failed to address the constitutional issues in the FCC forfeiture action and has inadequately addressed them in arguments before this Court. Under the doctrine of primary jurisdiction, this Court should not rule on the constitutionality of the regulations at issue until the FCC has itself adequately addressed the issue. See Far East Conference v. United States, 342 U.S. 570, 574-75 (1952); United States v. Western Pacific R. Co., 352 U.S. 59, 63-64 (1956); Writer's Guild of America v. American Broadcasting, 609 F.2d 355, 366 (9th Cir. 1979), cert. denied, 449 U.S. 824 (1980). This Court defers in the first instance to the FCC to provide guidance on the factual and technical issues related to the constitutionality of the regulatory scheme. That is, in light of current technology, is a total ban on new licensing of micro radio broadcasting the least restrictive means available to protect against chaos in the airwaves? The FCC could provide this guidance in the context of addressing Defendant's arguments in the pending forfeiture proceeding, or in the context of its rule-making powers.


On the present record, this Court does not find a probability that Plaintiff will succeed on the merits, particularly in the absence of guidance from the FCC on Defendant's constitutional challenge to the regulations at issue.

1 While there may be a serious question as to the merits, on the
2 present record the Court does not find that the balance of harm
3 tips sharply in favor of the FCC.

4 Accordingly, Defendant's motion for a preliminary injunction
5 is hereby DENIED, and the present action is STAYED, to allow the
6 FCC to address the constitutional issues in the appropriate
7 forum.

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9 IT IS SO ORDERED.

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11 Dated: JAN 30 1995


CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE

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13 Copies mailed to counsel
14 noted on attached sheet
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25
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27
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For the Northern District of California

lan Korn
lan Korn
2 Landers Street
an Francisco, Ca 94114 [94cv3542]

David Silberman
Federal Communications Commission
1919 M Street, N.W.
Washington, DC, 20554 [94cv3542]

ouis N. Hiken
ne Sansome Street Ste 900
an Francisco, CA 94104 [94cv3542]

Patricia A. Duggan
U.S. Attorney's Office
450 Golden Gate Avenue, Box 36055
San Francisco, CA 94102 [94cv3542]

eter Franck
eter Franck
ne Sansome Street, Suite 900
an Francisco, Ca 94104 [94cv3542]

INSIGHT ON RULES

Courts Will Decide Future of LPFM

by Harold Hallikainen

SAN LUIS OBISPO, Calif. In the past I have questioned the FCC's reasoning in not establishing a low-power FM service, similar to what was done with television. Establishment of low-power unlicensed FM services raises several freedom of speech issues.

The FCC routinely fines unlicensed stations and orders them shut down, but many continue to operate. Some take their cases to court.

The case of William Leigh Dougan (operator unlicensed station KAPW(FM) Phoenix) v. FCC is a typical example.

Gap fillers

The FCC fined Dougan \$17,500 for the operation of a half-watt unlicensed FM station and refusing an inspection request.

Dougan disputes the FCC's jurisdiction over his station because it does not interfere with other licensed broadcasters or "otherwise enter into interstate commerce."

He also attacks the "appeals process" available to those who receive a forfeiture order from the FCC. Dougan's attorney argues that the FCC could decide not to turn the case over to the Justice Department for collection, leaving Dougan with an outstanding forfeiture order and no chance for his day in court.

The FCC is pressing for dismissal on the basis that the FCC fine order has not

"injured" Dougan.

The existence of a license-free, low-power broadcast service would have precluded the need for this conflict.

The FCC has said it is more spectrum efficient to license a few high power stations, rather than many low-power stations because the coverage-area-to-interference-area ratio of high-power stations is greater. But such an allocations scheme creates gaps where low-power stations would fit without interference.

If, for simplicity's sake, we assume an omnidirectional, horizontal radiation pattern and make the prohibited overlap areas tangent, a small area without overlap occurs between the stations. If three stations each have an "interference radius" of 100 kilometers, and they are packed as closely as possible, it is possible to fit another station with an interference radius of 15 kilometers between the intersections of the other interference circles.

Is it spectrum efficient to not authorize stations to fill these gaps? If freedom of speech is applied to broadcasting, does the FCC have a "compelling governmental interest" to prohibit low-power stations that can operate without interference to existing stations?

Gap hunting

Determining the location of these "holes in the spectrum" and the maximum power that may be radiated without

interference, as currently defined by regulations on prohibited overlap, is an interesting problem.

The FCC could "find the holes" and define a maximum ERP and HAAT for each hole. As the antenna is moved from the "center of the hole," its power would have to be reduced to prevent interference. As an alternative, the FCC could define a simple procedure for determining where a low-power station could operate interference free and a private organization could publish a list of frequencies and powers available.

Better yet, software writers could design programs to determine the frequency and maximum ERP/HAAT combination that could be operated at a user-specified latitude and longitude. Such software could be sold with FCC approved transmitters at retail stores, such as Radio Shack. These stations would be required to protect licensed stations and would not receive any interference protection.

Another way to prevent interference to licensed stations would be to set aside channels exclusively for the use of unlicensed stations. It's a bit late to do this for FM, but it could be done with the expanded AM band. If a new band is finally used for digital audio broadcasting, and the adopted technology allows for independent transmitters for each station (perhaps through the use of spread

spectrum techniques), a few channels (or different random-number codes for spread spectrum) could be set aside for unlicensed operation.

The FCC does allow unlicensed broadcasting in the AM and FM broadcast bands, but with extremely limited coverage. Intentional radiation in the AM band is allowed if the field strength is limited to 24000/E(kHz) microvolts per meter measured 30 meters from the radiator.

Education exception

An exception is allowed for educational institutions where the measurement point is extended to the perimeter of the campus. A 1 MHz signal that is 24 microvolts per meter 30 meters from the antenna will probably not be heard very far away.

Unlicensed operation in the FM band is limited to a field strength of 250 microvolts per meter measured 3 meters from the antenna. This works out to 165.8 picowatts per square meter. KAPW's 500 milliwatts appears to violate this requirement.

It is up to the courts to decide these various unlicensed broadcast station cases. Perhaps they will find that technology has invalidated some precedents and that the time is right for an era of micro-broadcasting to begin.

□□□

Harold Hallikainen is president of Hallikainen and Friends, a manufacturer of transmitter control and telemetry systems. He also teaches electronics at Cuesta College, San Luis Obispo. He can be reached at 805-541-0200. He can also be reached on internet at ap621@cleveland.fernet.edu.

THE RF EXPERTS KNOW—MYAT DELIVERS

#3

For Mark Westwood

1

TO: Media Commission Members
Dean Beverly Hendricks
Dr. Juan Gonzales
Dr. Robert McKenzie
Forrest Hillis
Joe Fenzler
Terri Owen

draft

CC: Dr. Senour, Department Head of AV
Don McKenzie, Head of Telecommunications

FROM: Rob McKenzie
Assistant Professor of Communication Studies
Faculty Advisor to KSSB

RE: Request for Approval of Implementation of a Trial KSSB
Broadcast Signal

DATE: 3/14/91

A recent FCC ruling allows universities to legally implement low-powered stereo broadcast radio stations at relatively minor financial costs. This memo is a request to the Media Commission and appropriate administrative officials of the California State University, San Bernardino, to grant approval of a plan to implement on a trial basis a low-powered KSSB stereo radio broadcast signal at 106.3 FM with a maximum listener range of 1 mile. The trial period will last for two months, from April 8, 1991 through May 8, 1991, and will be funded entirely by KSSB.

At the end of the trial period, if the general response from students, faculty and administrators to the broadcast outlet is positive, it will be requested that KSSB then receive permission to continue as both a cable and a broadcast radio station. At any time during the trial period, if the general response is not positive, then the KSSB will return to broadcasting solely as a cable station. A plan for evaluating listener response appears in this memo shortly.

I am channeling this request through the Media Commission because it is the main supervisory body for campus media. In making this request, I understand fully that I, as KSSB's Faculty Advisor, (take sole responsibility for the success or failure of the venture.) However, I assert that since I have worked intimately with the KSSB staff over the last year and a half I am well aware of their collective professionalism and capabilities, and I am completely confident that they can offer a high quality broadcast product serving important localized needs of campus and nearby off-campus listeners that have not been met before.

In making a case for KSSB to be allowed a trial period for testing a broadcast signal, this memo presents:

- (1) the current operating status of KSSB,
- (2) the need for expanding KSSB beyond cablecasting to include broadcasting,
- (3) the consultation procedures undertaken to insure that KSSB's expansion fully complies with legal and technical requirements,
- (4) the plan for testing the KSSB broadcast signal and evaluating listener response

Current Operating Status of KSSB

KSSB is a student-run, cable radio station located at 106.3 FM. Its format is "diversified" and includes shows that feature alternative rock, classic rock, jazz, rap, news, educational interviews, reggae, rhythm and blues, classical music, and many other types of programming. The station personnel include one faculty advisor, 10 elected managerial positions, seven news announcers, and (about 50 disc jockeys,) who together provide programming from 10AM to 2AM every day. The operation of KSSB is closely tied to Comm 243B (Radio Practicum), a course that requires students to train to become disc jockeys, news announcers, or other on-air personnel. The course has had steady enrollments of 20+ students per quarter for the last year and a half.

Because of the practical skills learned or improved in radio work at KSSB, a few of the staff have obtained positions also with commercial radio stations. These students and others would benefit from KSSB becoming a broadcast station because they would learn more about serving community needs.

Need for Expanding KSSB Beyond Cablecasting to Include Broadcasting

Two basic groups of people exhibit needs for expanding KSSB to include a broadcast signal: (1) KSSB listeners, and (2) KSSB staff members.

(1) Needs of Listeners. In order for a listener to hear KSSB, he or she must have a tv cable connected to a radio receiver. Although the sound of cable radio is cleaner than that of many broadcast stations, it unfortunately is also much more expensive (\$32.00 installation; \$3.00 monthly) and less convenient to access. In fact, the two biggest groups of potential listeners for radio (car drivers and people waking up to radio on their alarm clocks) cannot even get cable radio because their hardware is not equipped for it. The end result is that if people want to listen to cable radio, they have to exert much more effort than they would have to for listening to a broadcast station, and more often

than not, they choose not to pursue listening to a cable radio station.

People on campus can hear KSSB only outside of the Student Union because it receives cable tv and because KSSB has set up two speakers and donated a stereo receiver to provide programming for campus listeners. However, it is currently very difficult for KSSB managerial staff to regularly monitor the station's signal fidelity and on-air broadcast content since no cable runs to the Creative Arts building where KSSB is housed. Monitoring the station's programming must be done outside the Student Union or from a home where a radio receiver is connected to cable. The difficulty of monitoring the station's programming would be overcome by implementing a broadcast signal because it would be possible to monitor anywhere within the range using a portable radio set.

Because of the difficulty of hooking up cable on campus in order to listen to the station, I have been asked countless times by students, faculty and administrators how they can receive the station's signal at home or in their office. When I explain the process of contacting their cable company to have KSSB programming installed, they react negatively to what seems like a cumbersome process for just radio listening. Inevitably, most of them end up commenting that it would be nice to have a broadcast station that they could easily tune into on campus or in their cars for important news and information as well as music and entertainment.

If KSSB expands to include a broadcast signal, three main sets of listeners would be able to hear the station: (1) dorm and nearby apartment residents, (2) faculty and administrators on campus, and (3) car drivers in the CSUSB parking lots. Because the new listeners will bring new demands on the quality of what they are listening to, (a revised programming schedule) will be enacted at the beginning of Spring Quarter (Please see Attachment 1). The new schedule is designed to serve the needs of campus listeners; its content includes more campus news (registration deadlines, guest speakers/lecturers, sports scores, etc.), more campus information (available clubs, counseling agencies, facilities available to students daily menus of food served at the Commons), and more educational material (weekly interviews, educational trivia questions). (Newscasts will run daily from noon to 6pm at the top of the hour) and (educational interviews now run every Sunday from 6:30-7:00pm.) With the improved KSSB program schedule emphasizing more informational and educational material organized around a varied music format, KSSB staff members believe they can serve many listener needs that revolve around campus activities.

(2) Needs of KSSB Staff Members. Because of the difficulty involved in hooking up cable radio, KSSB staff have to work

very hard for listeners. Often, I observe student disc jockeys who prepare for and perform a whole show without receiving one listener phone call. Aside the emotionally discouraging effects on the disc jockeys, a lack of callers does not provide them with feedback on their professional performance, which can cause them to cease improving some of their broadcasting skills.

If a radio station has a core of listeners, the on-air personnel generally improve the quality of their programming because they are energized that an audience is listening to them, and (they take good care to provide as professional product as they can.) The students at KSSB know this, and I have concluded that although they are grateful for the opportunity to learn radio skills at a cable radio station, they also would dearly appreciate the opportunity to put those skills to use at a "real" radio station--namely, a low power broadcast station such as the one proposed in this memo.

Consultation Procedures Undertaken to Insure Legal and Technical Feasibility

Consultation with professional radio engineers I regularly come into contact with has revealed that under a June 23, 1989 FCC Ruling number 15, part 37, provision was made for universities to operate a low-powered stereo radio broadcast frequency as long as three requirements are met:

- (1) the power outage is 1/2 microvolts or less,
- (2) the signal does not interfere with adjacent FM signals of any other radio stations in the area,
- (3) the signal frequency is not currently used by another radio station in the area.

The practical idea behind passage of Rule 15, Part 37 was for universities to make use of radio broadcasts to better serve their local community listeners not only with entertainment and education, but also in disseminating vital information during public emergencies such as earthquakes.

To investigate the feasibility of KSSB fully complying with these requirements in order to implement a low-power broadcast signal at 106.3 FM, I undertook three activities: (1) I consulted two professional radio engineers (Roger Funk, Chief Engineer of KVCR, Valley College; Tom Richards, Chief Engineer of KSSB); (2) I commissioned a student (Mark Westwood) with an technical audio background for an independent study to research the viability of KSSB implementing a broadcast signal, and (3) I personally researched FCC documentation on Rule 15, Part 37, which explains the legal and technical requirements for implementing a low powered broadcast radio station. The result is the discovery that KSSB could implement a broadcast signal and fully comply with all technical and

legal specifications.

Mr. Funk is a key player in the consultation process. Under his direction Valley College implemented a very successful low-power FM broadcast station six months ago under FCC Rule 15, Part 37. At no cost to KSSB, he has provided results from a FM frequency availability study conducted for San Bernardino county by Dataworld, a radio engineering research firm well respected across the industry. The results show that the broadcast frequency 106.3 FM is available for CSUSB. The results also show that there are no other radio stations in the area broadcasting at 106.3 FM. In fact, the mountains surrounding CSUSB will provide a natural barrier for containing our signal near campus. Mr. Funk has agreed to assist KSSB efforts in setting up a trial broadcast signal if this proposal is approved.

Plan to Implement A Trial KSSB Broadcast Signal and Evaluate Listener Response

Implementation of a KSSB broadcast signal involves (1) upgrading the program quality) and (2) assembling the appropriate equipment.

(1) Upgrading Program Quality. New efforts have been undertaken to insure that KSSB's programming demonstrates a high degree of professionalism and good taste. Aside from the increase in news, information and education mentioned earlier, the Station Manager and Program Director have formulated new policies with regard to on-air material that could be potentially sexist or obscene (see Attachment 2). The policies are now regularly articulated at weekly staff meetings and during training of incoming staff. The policies are also clearly posted inside the station studio. Violation of the obscenity/sexism policies results in the disc jockey's expulsion from the station. While there can never be a guarantee that some listener will not object to something in the content of a song or what the on-air personality says, KSSB maintains stricter standards than many commercial radio stations, and overall has a solid track record of providing music and talk in good taste.

Assembling the Equipment. KSSB currently can access all of the resources necessary to piece together the equipment necessary to transmit a low-power broadcast signal. The main pieces of equipment needed in addition to equipment already used at the station include:

Cost

(1) Two Phone Lines

Phone lines will run from the KSSB studio to PFAU library, which will in turn transmit the signal to listeners.

(2) Broadcast Board

\$35.00

This piece of equipment converts the studio signal to a broadcast signal before it gets carried by the phone lines.

(3) FM Exciter

no cost

This piece of equipment transmits the signal to listeners. Under an agreement with Dr. Senour, an exciter on loan from A/V will be placed on top of the library. If the station continues broadcasting after the trial period, a new exciter will need to be purchased.

(4) Antenna

A temporary antenna will be constructed by KSSB's Chief Engineer, Tom Richards, for the trial period. After the trial period, if the station continues broadcasting a new antenna will need to be purchased (\$.).

The total start-up cost for a KSSB broadcast signal is \$. This is an extremely low expense considering the technology and labor involved, and it reflects a great willingness on the part of the people involved to donate their time, their skills, and their own personal resources in order to implement a successful broadcast signal. After the trial period, and additional \$ in equipment expenditures would be required. I am confident this money can be raised fairly easily through grants, fundraisers, and official funding requests (IRP Board).

The equipment would be set up to test the broadcast signal beginning April 8, 1991. Immediately afterwards, a "field intensity" test would be undertaken by the KSSB Chief Engineer to document that the station's signal does not interfere with other radio station signals. For two months the station will operate simultaneously as a cablecaster and a broadcaster. During this period, four means of assessing audience response to the station will be implemented:

- (1) On-air announcers and disc jockeys will solicit listener calls and then log in comments that listeners provide when they call the station.
- (2) A listener satisfaction survey sampling 50-75 random campus listeners will be conducted or directed by the Station Advisor.
- (3) A memo soliciting general comments on the station from faculty and administrators if they've heard the broadcast signal will be circulated.
- (4) Unsolicited comments from listeners, provided in person, by mail, or over the telephone will be logged.

Once all the audience response data are collected, I will submit a report during the first week of June summarizing

the evaluations of the KSSB broadcast signal to the Media Commission.

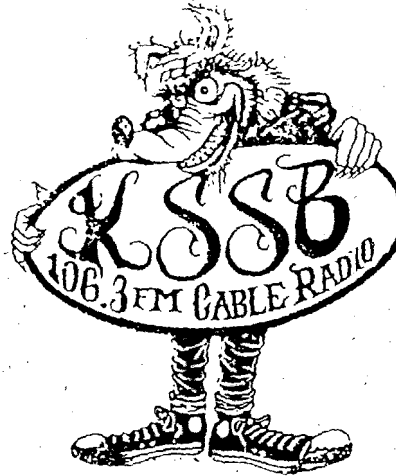
KSSB to broadcast on FM

After nearly three years of cablecasting, KSSB will soon be reaching listeners on the FM dial for the first time.

A recent ruling by the Federal Communication Commission, the national governing body of radio and television, allows organizations to broadcast at low wattage as long as it does not interfere with other radio stations.

Sunday, April 21, is the date set for KSSB's first stereo broadcast at 9 p.m. following a press conference/party for the staff. The station will still be at 106.3 FM. The addition of an FM frequency will be going through a two-month trial period.

Education, campus news and alternative varieties of music will



be the key source of programming for the duration of the trial period.

The biggest emphasis, however, will be on education seeing as that KSSB broadcasts from an institution of higher learning.

The broadcast antenna resides on the roof of the Pfau Library and will have a one-mile radius around the campus reaching as far east as "H" Street, as far south as the intersection of Kendall and "E" Streets and west to the 215 freeway.

KSSB, which is carried by Chambers and Comcast cable systems throughout San Bernardino, Grand Terrace, Highland, and Fontana will still remain on cable.

see KSSB, page 2

Photo by Steven Jennings

page 8

Greeks...

to cover the activities involved in. The club is on Circle K and the brings you up to and the ΣN installa-

...7 & 9

Opinion...

...So much is going on, and you're sure to want to get involved. This time we feature the ROTC issue as well as the fee increases. Whether you're offended or agree write us a letter and let us know how you'd respond...

...14 & 15

Sports...

...Baseball is defending it's Western Regional Championship and Golf's nationally ranked, and *The Chronicle* covers all of the campus sports. This week, see the results of Jennifer Plummer's national championship meet...

...19 & 20

At #5

made his mark as an impresario of action-packed films ("48 HRS.," "Streets of Fire," "Another 48 HRS.," "Trespass").

"Yes, I'm perpetually infantile," he cracks. As he sees it, action films are "particularly the province of motion pictures."

But critics, he finds, seem particularly enthralled "with any story that would better be told as a novel."

Hill says he's been offered "some very distinguished novels" to direct but "I don't think a good

"Why did we have to shoot all the wolves? Why was the land (devastated) in so many ways? They did not realize what a precious resource it is."

Telling the story of Geronimo is important, Hill says, because "we're all Americans. It diminishes all of us if the diversity, the tapestry of America, is erased."

■ **'Geronimo' reviewed.**
Weekend/Page 5.



When Geronimo is captured, he is paraded before the cavalry troops at San Carlos.

Gay pride takes to the air waves in S.B.

By **MARK MUCKENFUSS**
Sun Staff Writer

If you haven't passed within a mile of 16th and D streets, you probably haven't heard Pride Radio at 102.5 FM. The low-power radio station only covers that small area of central San Bernardino with its signal.

The station is a project of St. Aelred's Parish, an Episcopalian church that ministers in support of the gay and lesbian community.

"There are several goals we have in mind here," says the Rev. Paul Breton, of St. Aelred's. "For myself personally, I have become rather incensed by the disinformation and misinformation that's being so maliciously broadcast on so-called Christian radio stations about gays and lesbians and about AIDS. I have not heard an effective voice to countermand that information."

The station will gear much of its programming toward "af-



DAVID CREAMER/The Sun

The Rev. Paul Breton will host a show on Pride radio.

firming issues of the gay and lesbian community. There'll be some talk shows, commentaries, probably some interview programs as well," Breton said.

But, the station will not just aim its programming at gays.

"We're located in a neigh-

borhood," Breton says of the parish, "and I think we have an obligation to that neighborhood as well. We need to be concerned about neighborhood issues. There are a lot of concerns about crime, graffiti, employment, businesses that are clos-

ing, bringing new businesses in, street lighting..."

The station will address these issues in its programming, he says.

Pride Radio began broadcasting Nov. 22 and program schedules are still being developed. Breton plans his own "magazine style" show to begin airing around the first of the year. A dedication and blessing of the station is planned for Feb. 13.

Currently, the station is run by a staff of 15 volunteers. All the equipment for its operation has come from donations.

"Across the U.S., the gay and lesbian community has put on a number of programs," he says. "But, no one has so far had the insight to own their own stations and create their own programming. I see this as sort of a model for the rest of the nation. I believe the time is now to present our own voice. If we can do this here, with a church that's hurting for money, anybody can do it."

View the C with mode

By **CARLA WHEELER**
Sun Staff Writer

The serene scene graces countless Christmas card covers in one rendering or another: Three turbaned men riding their camels across the desert, bearing gifts from afar as they make their way toward a bright star.

The explanation for the bright star is the focus of a Christmas show now being presented at the George F. Beattie Planetarium at San Bernardino Valley College.

Was the "star" a miracle comet? A supernova or exploding star? Two planets that appeared to be so close together they looked like one?

The answer, according to many scientists, is that the three wise men in search of Christ child were probably following Jupiter and Venus.

The two planets move

away.

Szarsynski, unaware of the subject's intent, found it odd that this driver would activate an alarm and then flee. His suspicions were heightened and then confirmed

his happiness with his alarm and gratitude to Szarsynski. He stated, "I guess the alarm paid off. I am glad that another student cared enough to get involved. His efforts prevented the theft of my vehicle."

Faculty Senate puts ROTC future in jeopardy

The Reserve Officer's Training Corps discriminates against handicapped students, pregnant students, and homosexual students. So says some members of the Faculty Senate. And their decision could force the removal of the Army program.

Currently enrolled students would not be affected, but if the

resolution is passed, no future student could participate.

Students were in front of Pfau Library on Wednesday, April 10, 1991 petitioning for signatures in support of removing the program. Student activist Chuck Reed said, "This is not just a gay issue, this is a discrimination issue."

KSSB

Cont'd from page 1

The station was approved for broadcast on April 9 through the offices of Student Services after reviewing a proposal by Station Advisor Rob McKenzie and endorsed by the Media Commission. This followed nearly two months of hard work and research by McKenzie, Chief Engineer Tom Richards, Assistant Engineer Marc Westwood, and Station Manager Brian Murphy.

"Since I began as station manager, students have asked me 'why can't we become a real FM station?'" said Murphy. "Now we are going to be one serving the entire

college community."

KSSB will have 15,000-20,000 potential new listeners in the north end of San Bernardino, including Serrano Village and the apartments surrounding CSUSB. Already, KSSB has 100,000 potential listeners on cable. Listeners may call in for requests or information at (714) 880-KSSB.

"I am so completely thrilled because students have been waiting a long time for this and they will be getting genuine practice of broadcasting skills that they wouldn't get at a purely cable station," said McKenzie.

CRIME WATCH

By Martin Hepp
Opinion Editor

Complacency and a false sense of security, these are two of the attitudes that create a problem for the Department of Public Safety here at CSUSB.

Despite the fact that the CSUSB police force is budgeted to employ eleven police officers and five dispatchers and administrators, their task is formidable. Not only are they responsible for the personal safety of a fluid population of nearly 12,000 persons, but also the safeguarding of their possessions and the safety and property of a multi-million dollar corporation and its employees. In addition, they are responsible for an area that extends for one mile outside the boundaries of CSUSB's 422-acre campus. Include their inherent responsibility to cooperate with neighboring law-enforcement agencies, and the task may seem nearly impossible.

But upon review of the crime statistics for this campus, it is evident that the Department of Public Safety is quite proficient in their undertaking of this challenge. However, with the increase in population and real-estate development that is taking place in the Inland Empire, and the anticipated soaring enrollment here at CSUSB in the next ten years, this task can only become more difficult.

The Department of Public Safety's Operations Analyst, Quentin Moses, remarks that the main crime threat comes not from students themselves, but rather,

from persons with no campus affiliation. He added that students are the most victimized by crime, with larceny, auto burglary, and auto theft the most prevalent crimes on this campus.

The Director of Public Safety, Edward Harrison, has been a specialist in campus law-enforcement for 17 years, and worked at C.S.U. Long Beach before coming to CSUSB. He says that although campus police are doing an outstanding job here, he would like to see students become more involved in crime prevention.

Chief Harrison feels it is unfortunate that students have, "No time for crime...." until they are victimized themselves. And he points to the fact that this is the only campus in the area to offer a four-year degree in Criminal Justice, and it could only be beneficial for students to form some sort of "Campus-Watch" or "Campus-Safety" organization to become more involved with the Department of

Public Safety and help reduce crime on campus.

Immediate steps in convention that can be taken by students, faculty and visitors: remember to lock your car, you leave it; don't leave it unattended-even briefly. Be suspicious of activity in the parking lot if you see it (this is where the greatest loss occurs.)

If you have been the victim of theft, whether it be books, clothing, car stereos, etc., that you check with the lost and found section of the Department of Public Safety before you lose the item a total loss. The lockers full of these items have been recovered once and the Department keeps them only six months before they are given to charity.

Most importantly, be involved in crime prevention before you are a victim, and until after it happens, because it's too late.

CRIMES REPORTED TO PUBLIC SAFETY 1989, 1990, JAN 1-MAR 1

	1989	1990	1991
Murder	0	0	0
Rape	1	0	0
Robbery	0	0	0
Assault	5	3	0
Burglary (Auto)	42	87	12
Larceny (Theft)	70	100	23
Motor Veh. Theft	13	22	7
TOTAL	131	212	42
Dollar Loss	\$138,587	\$174,838	\$18,778
Dollar Recovery	\$58,900	\$78,300	Not available

Source: Department of Public Safety, CSUSB

INLAND The Sun Empire

Three hurt in chain reaction collisions/B3

People's Choice works toward better health care/B4

East Coast shows fastest income growth in '80s/B10

Cal State S.B. about to tune up and go out on air

By CAROL BAKER
Sun Staff Writer

SAN BERNARDINO — California State University, San Bernardino, is about to undergo a renaissance in radio as its own KSSB begins broadcasting in a market with up to 20,000 potential new listeners.

Radios within a one-mile radius of KSSB's new transmitter and 15-foot antenna atop the campus library can pick up the station's signal at 106.3 FM beginning Sunday at 9 p.m.

From that moment on, the hard rock

palate of Rockin' Robin Diamond and U.I. The Unknown Jock — two student disc jockeys — can be sampled from any point on campus, and a bit beyond.

Listeners also can tune in to university news and an educational interview program, said Rob McKenzie, faculty adviser for KSSB.

"We play some of every type of music you can get on the air," McKenzie said, "but with a college radio station it naturally gravitates toward alternative rock."

Until now, KSSB was accessible only on campus via cable hookup on television.

"The two biggest groups of radio listeners are people who listen in cars and people who listen on their alarm clock (radios). We could never reach those people," said McKenzie, a communications professor.

Ironically, the KSSB's primary target, Cal State's students, often had no access to the station.

"It's very expensive for students to get cable," KSSB station manager Brian Murphy said. "Now, they'll be able to get the station on their clock radios, Walkmans, whatever."

The non-commercial station will maintain its current programming

schedule of three to 15 hours a day on the air, but students eventually want to broadcast round-the-clock.

Several months ago, McKenzie and some of his students discovered new Federal Communications Commission rules that allow for broadcasts within a one-mile radius without getting a commercial license, provided the radio signal does not bleed into another station's.

FM-106.3 was clear, so the students proposed a two-month broadcast tryout. University President Anthony Evans approved the project April 9.

"So we're on guard for two months," McKenzie said, adding that he expects

the broadcast to pass the test and become permanent.

While thousands of cable TV subscribers have access to KSSB, McKenzie said there is no way to know if anyone was listening. That has bothered the roughly 50 students involved with KSSB.

"They'd be real discouraged doing the show and not knowing if there was anybody out there," McKenzie said.

KSSB's half-way broadcast signal will now reach east to H Street, south to Kendall Drive, west to Interstate 215 and north to the mountains behind the university. It includes several large apartment complexes off University Parkway.

D The Sun ire

Three hurt in chain reaction collisions/B3

People's Choice works toward better health care/B4

East Coast shows fastest income growth in '80s/B10

B

THURSDAY
April 18,
1991 ***

S.B. about to tune up and go out on air waves

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Att #6

CALIFORNIA STATE UNIVERSITY, SAN BERNARDINO

THE WEEKLY

CHRONICLE

VOLUME 28, ISSUE 14

March 9, 1994

Coyote Radio hit with FCC fine, station will be silent- for now

by Ernest T. Belding
Chronicle staff writer

Coyote Radio, formerly KSSB, is voluntarily off the air for an indefinite amount of time, according to Coyote Radio program director Jonathan Lyons.

Lyons stressed that the decision to go off the air was made "completely by us at the station". He added that due to a "variety of factors" this was an ideal time for Coyote Radio to stop broadcasting. The Federal Communications Commission did not ask or require that the station go off the air, said Lyons. "That's just a rumor. We decided that this was a good time to re-evaluate and re-align the station."

Paul Oei, an FCC engineer working on the investigation, told

The Chronicle that there was no demand made on the station to stop broadcasting, as was reported in the March 4 edition of the San Bernardino County *Sun*. Oei said that the FCC investigation found that the station's signal was too strong for an unlicensed station, and required that Coyote Radio's signal strength be downgraded. Low-power stations are not required to have a license under Part 15 of FCC regulations. Oei said that the station has, however, been fined \$8,000 for its overpowered signal. The station has thirty days to appeal this action.

Lyons said that Coyote Ra-

dio may resume cable transmission as soon as today.

Dr. Craig Monroe, Chairperson of the Dept of Communication Studies, told *The Chronicle* that Coyote Radio will likely stay off the air for the duration of the current quarter. The decision was made to stay off the air until the signal strength of the station can be accurately measured. In addition, Coyote Radio will have a new faculty advisor in the spring quarter, although this change has nothing to do with the FCC action.

Dr. Monroe adds that the signal strength violation was completely inadvertent, and steps will be taken to insure that future broadcasting will be within FCC regula-

PRIDE 102.5 FM OPERATES IN COMPLIANCE WITH THE RULES AND REGULATIONS OF THE FEDERAL COMMUNICATIONS DEPARTMENT OF THE UNITED STATES OF AMERICA. PRIDE 102.5 FM BROADCASTS AT 100 mw VIA A DIRECTIONAL ANTENNA. RULES AND REGULATIONS CONCERNING PRIDE 102.5 FM'S OPERATIONS MADE BE FOUND IN FCC PART 15, SEC. 30 OF FCC REGULATIONS. COMMENTS CAN BE DIRECTED TO PRIDE 102.5 FM, P.O. BOX 2775, SBdno, Ca. 92406.

The Inland Empire's
PRIDE 102.5 FM
 COMMUNITY RADIO FOR SAN BERNARDINO
 P.O. BOX 2775, Sbdno, Ca.
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